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REALIZATION OF THE PUBLIC WORKS PENALTY IN LITHUANIA

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Abstract. *In this article there is analysed an independent criminal punishment – public works, which was determined by the Criminal Code and the Punishment Enforcement Code of the Republic of Lithuania as alternative punishment to freedom deprivation punishment. Without looking into the process of historical development, it is made an attempt to overview the tendency of public works' spreading, to analyse the problems of public works' realisation and how to deal with them. There is compared Lithuanian legal regulations with international documents, which are related with alternative punishment as alternative to freedom deprivation punishment. There is also looked over public works' legal regulations in foreign countries, an experience of public works implementation in Lithuania and abroad and, the most important, there had been given landmarks of public works institution improvement. The article is based upon the documents of the United Nations and the Council of Europe, legal regulations and practice of public works in foreign countries, opinion and studies of foreign scientists and the other authors, the data of statistics and questioning of the officers of correctional inspections.*

Keywords: *public works, penalty, alternatives for the liberty deprivation punishment, international documents, reasocialization.*

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Introduction

Public works as an alternative to imprisonment was recommended in the United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules) in 1990, which were adopted at the eighth United Nations Congress on Crime Prevention and treatment of offenders and subsequently approved by General Assembly Resolution 45/110[1]. For example, the European rules on community sanctions and measures adopted by the Committee of Ministers at the 482nd meeting of the Ministers' Deputies, recommends that the offenders make greater use of community penalties – public works[2]. It should also be noted that at the 681st Council of Europe Committee of Minister's Deputies meeting in 1999 the prison overcrowding and prison population growth problem was discussed. During this meeting was a recommendation for the Member States was approved which recommended applying of community measures and sanctions instead of imprisonment of offenders. One of the proposed measures in the above mentioned recommendation are public works[3].

In addition, public works were recommended in the Committee of Ministers of the Council of Europe Recommendation Rec (2000)22 on improving the implementation of the European rules on community sanctions and measures adopted by Committee of Ministers' on 29 November 2000 at the 731th meeting of the Minister's Deputies[4]. In this context, it is worth to investigate the public works punishment in the Lithuanian legal system as an alternative to imprisonment and to evaluate the factors conditioning its effectiveness and give proposals and suggestions for their improvement. Object of the article - the public works punishment as an alternative to imprisonment and its effectiveness determining legal and practical factors. The aim of this article – to reveal and evaluate rationality and efficiency of the public works' execution, taking into account the standards of international instruments, also advanced foreign legal regulation of public works and the experience, and to make conclusions and proposals on public works punishment's legal regulation and enforcement improvements. There are logical, systematic analysis and comparative research methods applied in the article.

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1 United Nations Standard Minimum Rules for Non-Custodial Measures Adopted by General Assembly resolution 45/110 of 14 December 1990 (The Tokyo Rules) [interactive]. [accessed 26-03-2011]. <http://www2.ohchr.org/english/law/tokyorules.htm>.

2 Recommendation No. R (92) 16 of the Committee of Ministers to Member States on the European Rules on Community Sanctions and Measures Adopted by the Committee of Ministers on 19 October 1992 at the 482nd meeting of the Ministers' Deputies [interactive]. [accessed 26-03-2011]. <https://wcd.coe.int/wcd/com.instranet.InstraServlet?>.

3 Recommendation No. R (99) 22 of the Committee of Ministers to Member States Concerning Prison Overcrowding and Prison Population Inflation Adopted by the Committee of Ministers on 30 September 1999 at the 681st meeting of the Ministers'Deputies [interactive]. [accessed 26-03-2011]. <https://wcd.coe.int/wcd/com.instranet>.

4 Recommendation Rec (2000) 22 of the Committee of Ministers to Member States on Improving the Implementation of the European Rules on Community Sanctions and Measures Adopted by the Committee of Ministers on 29 November 2000 at the 731st meeting of the Ministers' Deputies [interactive]. [accessed 26-03-2011]. <www.justizia.net/docuteca/ficheros.asp?intcodigo=1204&IdDoc=SP>.

1. Methodological Aspects of the Public Works

Public Works – is a criminal punishment imposed by the court for a criminal offence or for the offender. Public works is relatively new, independent criminal punishment, which was instituted in Lithuania's national legal system in 2000[5], and introduced in May 1st 2003, after Criminal code came into force[6]. Public Works punishment is one of penalties, which restricts individual rights of offenders. It should be noted that in the old Criminal Code there were legitimated correctional works without imprisonment, before the new Criminal Code came into force[7]. However, these criminal penalties could not be identified because in case of correctional works without imprisonment the part of sentenced person wage was docked for the State, while the essence public works punishment – unpaid offender's labour in the public interest, which corresponds with recommendations of the European community sanctions and measures rules that "Tasks provided for offenders doing community work shall not be pointless, but shall be socially useful and meaningful and enhance the offender's skills as much as possible" (European community sanctions and measures, Rule 67)[8].

Public works can be described as one of the innovations not only in Lithuanian criminal justice, but also some foreign legal systems. In some foreign countries (e. g. UK, Norway, USA), public works has been appointed as an obligation or obligation to work for free in the public interest, postponing a prison sentence or during application of probation[9]. Switzerland was the first European country which legitimated public works as independent criminal punishment in its criminal law yet in 1971. In Switzerland this punishment originally was applied only to minors, and later for adult offenders who committed crimes[10]. Currently, public works, as an independent criminal punishment is criminal laws of France, Spain, Switzerland, Scotland, Czech Republic, Italy, Spain, Holland, Hungary, Latvia, Northern Ireland, Ukraine, Denmark, Portugal and other European countries[11]. In some of the UN and the Council of Europe member states, public works penalty between is appreciated among various segments of society positively (which is shown the researches results) and eventually became a popular alternative to imprisonment punishment in legal practice. This alternative to imprisonment was legitimated in 28 of 43 Council of Europe Member States' criminal and

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5 Criminal Code of the Republic of Lithuania. *Official Gazette.* 2000, No. 89-274.

6 Law of entry into force of Criminal Code of the Republic of Lithuania, Criminal Procedure Code of the Republic of Lithuania, Penal Code of the Republic of Lithuania. *Official Gazette.* 2002, No. 112-4970.

7 *Lietuvos Respublikos pagrindiniai įstatymai* [Basic laws of the Republic of Lithuania]. Vilnius: Fekama, 1999, p. 141−142.

8 Recommendation No. R (92) 16, *supra* note 2.

9 *Obshhestvennye raboty kak alternativa tjuremnomu zakljucheniju* [Public works as alternative to imprisonment]. Moskva: Penal Reform International, 2000.

10 Khutorskaja, N. B. *Opyt primenenija obshhestvennykh (obezatelnykh) rabot za rubezhom* [Experience of application of public (obligatory) works abroad]. Moskva: Penal Reform International, 2001.

11 Orlov, V. N. *Ugolovnoe nakazanie v vide objazatelnykh rabot v sovremennom zarubezhnom ugolovnom zakonodatelstve* [Criminal punishment in the form of obligatory works in the modern foreign criminal legislation]. Trudy juridicheskogo fakulteta, SevKavGTU, 2004.

punishment enforcement laws yet in 2001[12]. While in the international practice public works are recognized as an effective alternative to imprisonment, an annual sentence of punishment in Lithuania felt about four times since 2003. It is possible that because of public works' devaluation it could disappear from Lithuanian legal practice. In Lithuania, the mentioned situation occurred because the public works penalty's, as an independent criminal punishment, realization do not corresponds with progressive foreign legal regulation of the public works and its practice, as well as the United Nations and the Council of Europe international documents relating with the recommendations for alternatives to imprisonment, which will examine in this article.

2. Legal Regulation of Public Works

Public works, as a criminal punishment, legalized in Criminal Code's article 42 sections 1 and 2, and its procedures and conditions are regulated by the Lithuanian Punishment Enforcement Code in Part III of Chapter VIII Articles 39 to 45[13]. The peculiarity of Public Works, as a criminal punishment, is the fact that the court could impose it only if the sentenced person agrees (Criminal Code Article 46 Part 1). Offender's agreement is based on article 48 of the *Constitution* of the *Republic of Lithuania* that prohibits forced labour[14], as well as the Convention for the Protection of Human Rights and Fundamental Freedoms says that "No one shall be required to perform forced or compulsory labour"[15]. In addition, the Lithuanian Criminal law is consistent with previously listed in the international legal requirements, since, for example, the Tokyo Rules provides that "Non-custodial measures imposing an obligation on the offender, applied before or instead of formal proceedings or trial, shall require the offender's consent" (the Tokyo Rules, Rule 3.4)[16]. European community sanctions and measures rules also states that "The consent of an accused person should be obtained before the imposition of any community measure to be applied before trial or instead or a decision on a sanction" (European community sanctions and measures rules, Chapter IV – Co-Operation and Consent of the Offender)[17].

The essence of public works in Lithuania is the obligation imposed by the court for an offender to work for the public interest the number of hours during for a certain period of time without payment. The public works punishment's term is counted in months. The court may impose public works punishment which duration is from one month to one year. It should be noted that of is not fixed time and working time of

12 Stern, V. *Razrabotka mer, alternativnykh tjuremnomu zakljucheniju v stranakh centralnoj i vostochnoj Evropy i srednej Azii* [Elaboration of alternative measures to imprisonment in Central and Eastern Europe and Central Asia]. Mezhdunarodnykh centr po izucheniju polozheniju v tjurmakh. World Prison Brief, 2002, p. 30.

13 Penal Code of the Republic of Lithuania. *Official Gazette.* 2002, No. 73-3084.

14 Constitution of the Republic of Lithuania. *Official Gazette.* 1992, No. 33-1014.

15 European Convention on Human Rights and Fundamental Freedoms. *Official Gazette.* 2000, No. 96–3016.

16 United Nations Standard Minimum Rules for Non-Custodial Measures Adopted by General Assembly resolution 45/110 of 14 December 1990 (The Tokyo Rules), *supra* note 1.

17 Recommendation No. R (92) 16, *supra* note 2.

public works in Criminal Code's special part article of sanctions. In this case, the punishment's the timing and number of hours is determined by the court which imposes public works. For an Adult public works punishment hours shall not exceed 480 hours in case of crime, but made for a misdemeanour can not exceed 240 hours (as for a minor public work hours can not be more than 240 hours in both cases of crime and misdemeanour). The court, which imposes public works punishment, obligates an offender to work for the public interest within a specified period of time from 10 to 40 hours per month. In this way the court, on the basis of criminal law and imposition of public works punishment, makes classification of person committed offence and individualization of public works number of hours and duration. The application of Criminal law involves of the nature of the offence and the evaluation of danger degree to the public, characterizing the offender's personality and the evaluation of attenuating or aggravating circumstances, taking these factors into a whole and the public works time and time selection, the appropriate penalty goals. However, it is considered the need for more extensive legal regulation of public works, determination how many hours of public works offender must work during the day, because there are cases in legal practice when time on public works is disproportional to the hours of its fulfilment (for example, the court imposes 150 hours of community service work and set a four months term for its fulfilment), what was specified by officers of Correctional inspectorates of the Prison Department under the Ministry of Justice of the Republic of Lithuania. For example, the Spanish Criminal Code's Article 49 determines that public works – no longer than eight hours per day[18]. Ukrainian criminal law on public works regulates fulfilment time even more in details – no more than four hours a day for adults and no more than two hours per day minors[19]. In order to improve situation in Lithuania, it is advisable to think whether it would be to set in Lithuanian criminal laws how many hours per day offender must work, which will help officers of Correctional inspectorates of the Prison Department under the Ministry of Justice of the Republic of Lithuania to implement this type of criminal punishment effectively. Article 40 chapter 1 of the Punishment Enforcement Code determines that offenders', who have been given sentences of public works, correction measures are unpaid offender's labour in the public interest and the penal regime. This is the second public works, as a criminal penalty feature because punishment enforcement law provides means for public works fulfilment. Unpaid offender's labour has been defined as an individual offender's work or work in a non-profit state or public institution, company or organization (health care, care institutions, public and non-state enterprises, institutions or organizations offering social assistance to certain disadvantaged social groups or work in managing the environment and etc.). This is consistent with recommendations of the European Rules on Community Sanctions and Measures, which say that "community work shall not be undertaken for the purpose of making profit for any enterprise" (the European Rules on Community Sanctions and Measures, rule 67)[20]. It should be noted that the offender's work do not have the feature of legal

18 *Ugalovnyj kodeks Ispanii* [Criminal Code of Spain]. SPB, 2001, p. 25.

19 *Ugalovnyj kodeks Ukrainy* [Criminal Code of Ukraine]. SPB, 2002, p. 49.

20 Recommendation No. R (92) 16, *supra* note 2.

working relationship – it is unpaid, for the work of the offender is not paid in monetary salary or other reword, in addition it is not on contract basis. In this way, Labour Code of the Republic of Lithuania is not applied for offenders who work in public works[21], as well as other Lithuanian legislation in the field of work regulation.

The punishment enforcement law determines that the work that offender will do, will be selected by the correctional inspectorate together with the municipality executive authority where offender lives or with the county administration at the companies, institutions or organizations, as well as community-based organizations proposals or offender's request. Institution, company or organization in which the sentenced person will carry out public works must ensure offender's safe and healthy working conditions that meet safety and health regulations and legislation. Offenders, before the court imposed public works punishment, must be given instructions on occupational safety and health requirements and are provided with appropriate protective equipment. It is prohibited for offenders to work in hazardous working conditions and the dangerous work which are determined by Government of the Republic of Lithuania[22]. Offenders are not insured by the Law on Health Insurance Republic of Lithuania[23], Insurance Law of the Republic of Lithuania[24] and by other health insurance legislation. The punishment enforcement law provides the offenders with possibility of self-insure of health, also determines that the damage caused by offenders in the performance of community service for entity, institution, organization or public body, which acts as a community service, or a third party, must be compensated according to the Civil Code of the Republic of Lithuania[25]. It should be noted that the Lithuanian punishment enforcement law provisions on regulation of health insurance of offenders working in public works and damage compensation of offenders, do not meet basic international documents on alternatives to imprisonment. For example, the European Rules on Community Sanctions and Measures recommended insuring offenders against accidents, injury and civil liability during fulfilment of public works, it is also determined that, in principle, offender does not compensate costs incurred during fulfilment sanction or measure (the European Rules on Community Sanctions and Measures, rules 68 and 69)[26]. In addition, the Lithuanian legislation as well does not correspond with foreign countries experience in the public works implementation. For example, the French Penal Code's article 131–24 part 1 determines that "the state is responsible for all or part of damage caused by the sentenced person in the performance of public works and to other natural or legal persons"[27]. The Spanish Penal Code article 49 part 1 section 4 determines that "offender sentenced for public works, is guaranteed with all social guarantees determined in

21 Labour Code of the Republic of Lithuania. *Official Gazette.* 2002, No. 64–2569.

22 The Government of the Republic of Lithuania Resolution On approval of the list of hazardous work. *Official Gazette.* 2002, No. 87–3751.

23 Republic of Lithuania Law on Health Insurance. *Official Gazette.* 2002, No. 123–5512.

24 Republic of Lithuania Law on Insurance. *Official Gazette.* 2003, No. 94–4246.

25 The Civil Code of the Republic of Lithuania. *Official Gazette.* 2000, No. 74–2262.

26 Recommendation No. R (92) 16, *supra* note 2.

27 *Ugalovnyj kodeks Francii* [Criminal Code of France]. SPB, 2002, p. 97.

Correctional law"[28]. Also the Spanish Correctional law provides that persons sentenced to perform community service are insured with health insurance in accordance[29]. Thus, taking into account the recommendations of international documents and foreign experience, it is desirable to improve the existing legal framework on public works, with the possibility to cover health insurance and to insure against liability for damage caused by offender during of implementation of public.

3. Application of Public Works Penalty

Public works in Lithuania may be appointed only in cases where they are provided in the Criminal Code article's sanction, which classifies the offence. Currently, in specific part of Criminal Code there are determined only 88 cases when a person who committed an offense may be sentenced to public works, and even 342 cases of imprisonment (and up to life imprisonment), including 233 cases where there may be sentenced to arrest. It should be noted that one of the main shortcomings of criminal justice in Lithuania is just too frequent application of prison sentences. On the 1st January 2011 prison population rate per 100,000 of national population in Lithuania was 281 prisoners (convicts and detainees)[30], and in other European Union member states (old states) this number varied from 67 (in Finland) to 167 (in Spain)[31]. So it can be said that in Lithuania public works potential is not exploited enough as alternative to custodial sentences. As already mentioned, in Lithuania public works could be imposed only if the sentenced person agrees, as well as the works selected on the basis of the sentenced person's request. In this way, the offender's choice is free will. However, if offender does not accept assignment with the public works after a sentence becomes effective, they will be replaced with another penalty – a fine or arrest (Criminal Code, article 46 part 8). An analogous situation is true in case if the offender will avoid public works. Just during fulfilment of public works there is an additional condition - the sentenced person must be warned punishment enforcing institution (Criminal Code, article 46 part 7). As we can see, if he does not agree or avoids of public works, it provides the same penalties (amendment of public works to fine or arrest), however an offender's refusal to perform community service is not the avoidance of a penalty. In this case, one of the alternatives to imprisonment determined in the Lithuanian Criminal Code is a fine. However, for example, if he can not afford to pay the fine, a fine for offender will be replaced by arrest, which essence, as well as prison sentences, is physical isolation from society of offender. In this way, the legal situation sentenced person will depend on his financial situation and the person will be isolated from society. Meanwhile, both the Tokyo Rules, and the European

28 *Ugalovnyj kodeks Ispanii*, *supra* note 18, p. 26.

29 *Ispravitelnyj zakon Isspanii* [The Executive Spanish law]. St. Petersburg: Juridichesrkij Centr Press, 2002.

30 Kalėjimų departamento prie Lietuvos Respublikos teisingumo ministerijos 2010 metų veiklos ataskaita Nr. NV-74 [Prisons Department under the Ministry of Justice of the Republic of Lithuania 2010 ANNUAL REPORT]. p. 3.

31 International Centre for Prison Studies World Prison Brief (Europe) [interactive]. [accessed 06-10-2010]. <http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/?search=europe&x=Europe>.

Rules on Community Sanctions and Measures and the Recommendations on improving the implementation of the European rules on community sanctions and measures suggest that, wherever possible to avoid amendment of the alternative penalty to imprisonment. For example, the Tokyo Rules recommend that if the non-custodial measures are ineffective imprisonment would not be applied automatically, so that means in case of change or cancellation of this measure the competent authority should determine the appropriate alternative, non-custodial measure and imprisonment may be imposed only in the absence of other suitable alternatives (the Tokyo Rules, rules 14.3.-14.4.)[32]. The European Rules on Community Sanctions and Measures also recommend that the law does not provide automatic community sanctions or measures replacement with imprisonment in the case of failure to comply any imposed condition or obligation, and the change does not necessarily mean the decision to imprisonment (the European Rules on Community Sanctions and Measures, rules 10, 78, 82-86 rules)[33]. Prison sentencing reduction and increasing of alternative measures application is recommended by Recommendations on improving the implementation of the European rules on community sanctions and measures (Rule 6)[34].

Therefore, it can be stated that in Lithuania for sentenced person, who refuses or avoids a penalty of public works, it would be more appropriate to replace public works not only a with fine or arrest, but also other with alternative sanctions, such as restriction of freedom.

Offender who works in public works could get an incentive measure – thanks, for honest and diligence work from the penalty conducting officers (Punishment Enforcement Code, article 45). Incentive measures not change the legal situation of offender. He does not get any additional rights or benefits.

Meanwhile, the Tokyo Rules recommend (Rule 11.2) that "provision may be made for early termination of the measure if the offender has responded favourably to it"[35], and the European Rules on Community Sanctions and Measures recommend (Rule 88) that "the deciding authority should be able to terminate a sanction or measure before it is due to end when it is established that the offender has observed the conditions and obligations required and it appears no longer necessary to maintain them to achieve the purpose of the sanction or measure"[36]. According to the Lithuanian criminal law to exempt from public works penalty before term is possible only due to illness (Criminal Code, article 76), amnesty (Criminal Code, article 78) or mercy (Criminal Code, article 79). While Lithuania's criminal and punishment enforcement laws did net determine period shortening of public works penalty, but this is understandable, because public works is one of the milder criminal penalties.

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32 United Nations Standard Minimum Rules for Non-Custodial Measures Adopted by General Assembly resolution 45/110 of 14 December 1990 (The Tokyo Rules), *supra* note 1.

33 Recommendation No. R (92) 16, *supra* note 2.

34 Recommendation Rec (2000) 22, *supra* note 4.

35 United Nations Standard Minimum Rules for Non-Custodial Measures Adopted by General Assembly resolution 45/110 of 14 December 1990 (The Tokyo Rules), *supra* note 1.

36 Recommendation No. R (92) 16, *supra* note 2.

4. Social Aspects of Public Works Penalty

Correctional measure – penalty regime, determined by Punishment enforcement code, can be described as the sum of this penalty execution and performance conditions and rules. Those correctional measures effectiveness largely depends not only on the punishment enforcement institution (Correctional inspectorate), which controls the behaviour of the offender, but also on the directly participating employer of sentenced person, with whom the sentenced person shall carry out public works penalty, because punishment enforcement law establishes responsibilities to the employer, who also affects the behaviour control of the sentenced person. It can be said that the realization of public works is dominated by sentenced persons supervision and control element, while social assistance in order to deal with offenders' personal and social problems is not carried out, although according to the Criminal Code's article 42, public works penalty may be imposed on adult person who has committed an offence, and, in accordance with article 90 for a minor person who has committed an offence, but neither one case nor the other social rehabilitation of offenders is not carried out. It should be noted that a person, especially a minor, after court imposes criminal sentence, inevitably faces with certain problems, which usually unable to resolve alone, and social rehabilitation necessary to restore such persons social skills, relationships with family, loved ones and the same society, helping to refuse drugs, psychotropic substances or alcohol, helping to choose employment and to shape the attitudes and skills, which serve best to adapt socially in society. Also, an effective process of social rehabilitation of offenders, which manifests itself as the most important skill formation condition for offenders, meeting their social, cultural, spiritual and other needs, the crucial and important in crime prevention, because social rehabilitation is variety of social, psychological, educational, legislative action application for socially *desadaptated* people in order to restore the basic personal functions, physical, mental health and morality or social status. The current Lithuanian legal regulation does not correspond with the basic international documents relating to alternatives to imprisonment, as, for example, the Tokyo Rules recommend psychological, social and material assistance for offenders, as well as to strengthen ties further with the community and facilitate their integration into society, to various methods such as individual work, group therapy, program depending on residence and special treatment of different categories of offenders (the Tokyo Rules, rules 10.4., 12.2., 13.1., 13.2., 13.3. and 13.4.)[37].

Social work with offender is emphasised in the European Rules on Community Sanctions and Measures, which recommend to develop offender's responsibility for the whole society and especially for the victim, care based individualized programs and the development of working relationships between offender, supervisor and any of the participating organizations or individuals, make use of the community to provide offender personal, social, and determined type of material assistance and use working methods according with professional standard, which are recognized in social work and related

37 United Nations Standard Minimum Rules for Non-Custodial Measures Adopted by General Assembly resolution 45/110 of 14 December 1990 (The Tokyo Rules), *supra* note 1.

innovation of activities(the European Rules on Community Sanctions and Measures, rules 30, 70, 72 and 75)[38].

Recommendations on improving the implementation of the European rules on community sanctions and measures also recommend during social work with offenders sentenced to alternatives of imprisonment, special attention should be paid to the social rehabilitation programs for offenders, potential impacts on key skills development (such as elementary literacy and numeracy, general problem-solving, matters relating to personal and family relationships, antisocial behaviour), education or employment conditions, a possible tendency towards drugs, alcohol and so on. (Recommendations on improving the implementation of the European rules on community sanctions and measures, rules 21-23)[39]. It is also noteworthy that, and in some foreign countries such as Spain, France, in order to achieve effective offender's re-socialization goals, social work with offender sentenced for public works is concentrated on social, psychological, educational, legal measures taken implementation for offender, that would restore his basic personality functions, physical, mental health and morality or social status. In foreign countries offenders' social rehabilitation is focused on life skills improvement programs aimed at changing the behaviour of offenders in order to leave long-term behavioural changes.

It is therefore assumed that the Lithuanian punishment enforcement law should legitimize offenders on public works correction measure - social rehabilitation, which would help persons sentenced for public works to resolve the personal and social problems (employment, housing, documentation, addictions and other), giving individual moral support for them in the form of social assistance in various forms (consulting offenders, directing them to institutions, enterprises, organizations that provide social assistance, health care facilities, social rehabilitation facilities that provide services for persons with dependence on psychoactive substances), as well as necessary aid on personal and social support issues. In addition, social rehabilitation of persons sentenced for public works would be ensured by participation of society in correctional process and that principle is determined in Punishment Enforcement Code's article 8 part 2. For example, the Tokyo Rules (rule 17.2) says that "public participation should be regarded as an opportunity for members of the community to contribute to the protection of their society"[40].

Conclusions

1. Potential of public works penalty in Lithuania is undeveloped, as the Lithuanian Criminal Law the special part is brightly dominated by sanctions of imprisonment and public works determined only in specific sanctions of Criminal Code. Meanwhile, public works abroad is a popular and widely used penalty, which application is encouraged by international documents related to alternatives to imprisonment therefore it is proposed to expand

38 Recommendation No. R (92) 16, *supra* note 2.

39 Recommendation Rec (2000) 22, *supra* note 4.

40 United Nations Standard Minimum Rules for Non-Custodial Measures Adopted by General Assembly resolution 45/110 of 14 December 1990 (The Tokyo Rules), *supra* note 1.

the public works penalty usage in Lithuania. It is also proposed that in case offender refuses or avoids perform public works penalty, the penalty would not be replaced only by a fine or arrest, but also by limitation of freedom. In this way, in individual cases legal status of offender will no longer depend of his economic situation, moreover, is consistent with both the UN and the Council of Europe Committee of Ministers' recommendations that a sentence of imprisonment may be imposed only in the absence of other viable alternatives.

2. It is proposed to improve the existing public works' legal regulation in Lithuania, legalizing additional correction measure - social rehabilitation that would ensure effective offenders re-socialisation and society's participation in corrections process principles implementation. As well as to improve the existing legal framework of public works, with the possibility to insure offenders performing public works, health insurance and insuring offenders from the damage caused during implementation of public works. All this is in line with the UN and the Council of Europe Committee of Minister's recommendations for the realization of public works, as well as foreign experience in the realization of public works.

3. It is understood that the criminal laws of Lithuania should regulated how many per day offender has to work. This would help officers of Correctional inspectorates of the Prison Department under the Ministry of Justice of the Republic of Lithuania effectively implement this type of criminal punishment and its aims.

References

Constitution of the Republic of Lithuania. *Official Gazette.* 1992, No. 33-1014.

Criminal Code of the Republic of Lithuania. *Official Gazette.* 2000, No. 89–274.

European Convention on Human Rights and FundamentalFreedoms. *Official Gazette.* 2000, No. 96–3016.

International Centre for Prison Studies World Prison Brief (Europe) [interactive]. [accessed 06-04-2011]. <http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/?search=europe&x=Europe>.

Ispravitelnyj zakon Isspanii [The Executive Spanish law]. St. Petersburg: Juridichesrkij Centr Press, 2002.

Kalėjimų departamento prie Lietuvos Respublikos teisingumo ministerijos 2010 metų veiklos ataskaita Nr. NV-74 [Prisons Department under the Ministry of Justice of the Republic of Lithuania 2010 Annual Report].

Khutorskaja, N. B. *Opyt primenenija obshhestvennykh (obezatelnykh) rabot za rubezhom* [Experience of application of public (obligatory) works abroad]. Moskva: Penal Reform International, 2001.

Labour Code of the Republic of Lithuania. *Official Gazette.* 2002, No. 64–2569.

Law of entry into force of the Criminal Code of the Republic of Lithuania, Criminal Procedure Code of the Republic of Lithuania, Penal Code of the Republic of Lithuania. *Official Gazette.* 2002, No. 112-4970.

Lietuvos Respublikos pagrindiniai įstatymai [Basic laws of the Republic of Lithuania]. Vilnius: Fekama, 1999.

Obshhestvennye raboty kak alternativa tjuremnomu zakljucheniju [Public works as alternative to imprisonment]. Moskva: Penal Reform International, 2000.

Orlov, V. N. *Ugolovnoe nakazanie v vide objazatelnykh rabot v sovremennom zarubezhnom ugolovnom zakonodatelstve* [Criminal punishment in the form of obligatory works in the modern foreign criminal legislation]. Trudy juridicheskogo fakulteta, SevKavGTU, 2004.

Penal Code of the Republic of Lithuania. *Official Gazette.* 2002, No. 73-3084.

Recommendation No. R (92) 16 of the Committee of Ministers to Member States on the European Rules on Community Sanctions and Measures Adopted by the Committee of Ministers on 19 October 1992 at the 482nd meeting of the Ministers' Deputies [interactive]. [accessed 26-03-2011]. <https://wcd.coe.int/wcd/com.instranet.InstraServlet?>.

Recommendation No. R (99) 22 of the Committee of Ministers to Member States Concerning Prison Overcrowding and Prison Population Inflation Adopted by the Committee of Ministers on 30 September 1999 at the 681st meeting of the Ministers'Deputies [interactive]. [accessed 26-03-2011]. <https://wcd.coe.int/wcd/com.instranet>.

Recommendation Rec (2000) 22 of the Committee of Ministers to Member States on Improving the Implementation of the European Rules on Community Sanctions and Measures Adopted by the Committee of Ministers on 29 November 2000 at the 731st meeting of the Ministers' Deputies [interactive]. [accessed 26-03-2011]. <www.justizia.net/docuteca/ficheros.asp?intcodigo=1204&IdDoc=SP>.

Republic of Lithuania Law on Health Insurance. *Official Gazette.* 2002, No. 123–5512.

Republic of Lithuania Law on Insurance. *Official Gazette.* 2003, No. 94–4246.

Stern, V. *Razrabotka mer, alternativnykh tjuremnomu zakljucheniju v stranakh centralnoj i vostochnoj Evropy i srednej Azii* [Elaboration of alternative measures to imprisonment in Central and Eastern Europe and Central Asia]. Mezhdunarodnykh centr po izucheniju polozheniju v tjurmakh. World Prison Brief, 2002.

The Civil Code of the Republic of Lithuania. *Official Gazette.* 2000, No. 74–2262.

The Government of the Republic of Lithuania Resolution On approval of the list of hazardous work. *Official Gazette.* 2002, No. 87–3751.

Ugalovnyj kodeks Francii [Criminal Code of France]. SPB, 2002.

Ugalovnyj kodeks Ispanii [Criminal Code of Spain]. SPB, 2001.

Ugalovnyj kodeks Ukrainy [Criminal Code of Ukraine]. SPB, 2002.

United Nations Standard Minimum Rules for Non-Custodial Measures Adopted by General Assembly resolution 45/110 of 14 December 1990 (The Tokyo Rules). [interactive]. [accessed 26-03-2011]. <http://www2.ohchr.org/english/law/tokyorules.htm>.

VIEŠŲJŲ DARBŲ BAUSMĖS REALIZACIJA LIETUVOJE

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Santrauka. *Straipsnyje nagrinėjama viešųjų darbų, kaip savarankiškos kriminalinės bausmės, Lietuvos teisinė reglamentacija, taip pat šios bausmės atitiktis specialiųjų tarptautinių dokumentų rekomendacijoms bei pažangiai užsienio valstybių viešųjų darbų teisinei reglamentacijai ir realizacijai, taip pat siekiama apžvelgti viešųjų darbų plėtros tendencijas, išanalizuoti viešųjų darbų instituto realizacijos problemas ir priemones joms pašalinti, palyginti, ar Lietuvos teisinis reglamentavimas atitinka pagrindinių tarptautinių dokumentų, susijusių su alternatyvomis laisvės atėmimo bausmei, nuostatas, užsienio valstybių teisinį*

viešųjų darbų reglamentavimą, taip pat palyginti nacionalinę bei atskirų užsienio valstybių patirtį, sukauptą realizuojant viešuosius darbus. Straipsnyje siekiama pateikti viešųjų darbų instituto tobulinimo gaires. Pagrindžiama, kad Lietuvoje neišplėtotas viešųjų darbų bausmės potencialas, kadangi Lietuvos baudžiamojo įstatymo specialiosios dalies sankcijose ryškiai dominuoja laisvės atėmimo bausmės, o viešieji darbai numatyti tik atskirose BK sankcijose. Tuo tarpu užsienio valstybėse viešieji darbai yra populiari ir plačiai taikoma sankcija, kurią skatina taikyti tarptautiniai dokumentai, susiję su alternatyvomis laisvės atėmimui, todėl straipsnyje siūloma plėsti viešųjų darbų bausmės taikymą Lietuvoje. Taip pat siūloma, kad nuteistajam, atsisakiusiam ar vengiančiam atlikti viešųjų darbų bausmę, ši bausmė būtų keičiama ne tik bauda ar areštu, bet ir laisvės apribojimo bausme. Tokiu atveju individualiais atvejais nuteistojo teisinė padėtis nepriklausytų nuo jo materialinės padėties, be to, tai atitiktų tiek JTO, tiek Europos Tarybos Ministrų Komiteto rekomendacijas, kad „įkalinimo bausmė gali būti skiriama tik nesant kitų tinkamų alternatyvų". Be to, siūloma tobulinti esamą viešųjų darbų teisinį reglamentavimą Lietuvoje, įteisinant nuteistųjų viešaisiais darbais pataisos priemonę – socialinę reabilitaciją. Tai užtikrintų efektyvią nuteistųjų resocializaciją bei visuomenės dalyvavimo nuteistųjų pataisos procese principo įgyvendinimą. Taip pat tobulinti esamą viešųjų darbų teisinį reglamentavimą, nustatant galimybę apdrausti nuteistuosius, atliekančius viešuosius darbus, sveikatos draudimu bei apdraudžiant nuteistuosius nuo žalos, padarytos viešųjų darbų atlikimo metu. Visa tai atitiktų JTO ir Europos Tarybos Ministrų Komiteto rekomendacijas dėl viešųjų darbų realizavimo, taip pat užsienio valstybių patirtį realizuojant viešuosius darbus. Lietuvoje baudžiamuosiuose įstatymuose derėtų reglamentuoti, kiek teismo paskirtų viešųjų darbų valandų nuteistasis turi išdirbti per dieną. Tai padėtų šią bausmę vykdančiai institucijai veiksmingiau realizuoti šią kriminalinės bausmės rūšį bei jai keliamus tikslus.

Reikšminiai žodžiai: *viešieji darbai, bausmė, alternatyvos laisvės atėmimo bausmei, tarptautiniai dokumentai, resocializacija.*

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